IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2634 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GK BHATNAGAR

Versus

I.P MISSION TRUST

Appearance:

M/S S & S ASSOCIATES for Petitioners

MR SUREN M SHAH for Respondent No. 1

MR M A BUKHARI , AGP for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioners by which a declaration is sought that certain resolutions passed by I.P.Mission Trust are illegal, contrary to the provisions

of the Bombay Public Trusts Act, 1950 (hereinafter referred to as `the Act') and for quashing and setting aside those resolutions.

It was stated by the learned advocate for the petitioners that contrary to the provisions of the Act and particularly Section 36 of the Act and ignoring the object of the Trust, leases for a period of 99 years are sought to be made in favour of certain persons which is clearly illegal. It was also stated that though the petitioners had offered much more price, the respondent Trust intends to create leases in favour of other persons which would not be in the interest of the Trust as well as its beneficiaries.

It is not in dispute by and between the parties that an application under Section 36 of the Act has been made by the Trust which is pending before the Charity Commissioner for permission. In my opinion, Charity Commissioner who is the protector of charity, will take into account the provisions of the Act, the object of the Trust and trust deed and other relevant factors.It was contended on behalf of the Trust that the present petition is premature as the decision is still to be taken by the Charity Commissioner in exercise of power under Section 36 of the Act .

In my opinion, the petition is premature.When an application under Section 36 is pending before the Charity Commissioner, he will decide the same considering the provisions of the Act, the trust deed and other relevant records. I may also state that since I am not entering into merits of the case, I express no opinion on merits of the matter. As and when the Charity Commissioner will take up the application under Section 36 of the Act, he will decide the same after considering the facts and circumstances and provisions of the Act, trust deed and other records and materials. The petition deserves to be dismissed at this stage and is accordingly dismissed. Notice discharged. No order as to costs.

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